

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

JOHN SOSINAVAGE,	)	14-CV-3292-JBS-AMD
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
	)	
POLICE CHIEF JOHN SCOTT	)	
THOMSON, et al,	)	
	)	
Defendants.	)	
-----	)	
ANTHONY CARMICHAEL,	)	14-CV-3323-JBS-AMD
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
	)	
POLICE CHIEF JOHN SCOTT	)	
THOMSON, et al,	)	Camden, NJ
	)	January 25, 2018
Defendants.	)	2:50 p.m.
-----	)	

TRANSCRIPT OF CONFERENCE  
BEFORE THE HONORABLE ANN MARIE DONIO  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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## Colloquy

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1 (The following was heard in open court at 2:50 p.m.)

2 THE COURT: We're here for a conference in  
3 connection with various discovery issues and also to set a  
4 final schedule in this matter in cases 14-3292 and 14-3323.  
5 May I have the appearances please.

6 MS. COOPER: Yes. Good afternoon, Your Honor.  
7 Cheryl Cooper on behalf of the plaintiffs.

8 MR. BRANDES: Good afternoon, Your Honor. Paul  
9 Brandes on behalf of the plaintiffs.

10 THE COURT: Thank you.

11 MR. RYBECK: Good afternoon, Your Honor. Daniel  
12 Rybeck of the law firm of Weir & Partners on behalf of the  
13 City defendants.

14 THE COURT: Thank you.

15 MR. TERIS: Good afternoon, Your Honor. Benjamin S.  
16 Teris from the law firm of Brown & Connery on behalf of the  
17 Camden County defendants.

18 THE COURT: All right. Thank you, counsel. All  
19 right. This conference was set up following the Court's order  
20 on the motion to compel in each of the cases. I do note that  
21 there is pending motions to strike before the District Judge.  
22 Obviously, I'm not going to be addressing those motions. And  
23 that's in connection with opposition to the County's motion  
24 for summary judgment, correct?

25 MR. TERIS: Yes, Your Honor.

## Colloquy

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1 THE COURT: And that motion's still pending before  
2 the District Judge?

3 MR. TERIS: Yes, Your Honor.

4 THE COURT: All right. And just for the record,  
5 that's Mr. Teris. So this conference is being electronically  
6 recorded, and I would ask that each time you speak you  
7 identify yourself for the record.

8 So I received a letter from Ms. Cooper yesterday  
9 dated January 24th for today's conference, outlining what  
10 plaintiffs' counsel believes to be issues that the Court  
11 should address. I didn't see a response from defense. I'll  
12 note the letter was filed just yesterday.

13 Mr. Rybeck, have you had a opportunity to review the  
14 letter?

15 MR. RYBECK: I didn't even know one was filed,  
16 Judge. And I'm checking my emails now.

17 THE COURT: You don't -- you don't know there was  
18 one filed in the case that deals with what we have to talk  
19 about right now?

20 MR. RYBECK: I was in Court all day yesterday, Your  
21 Honor. I didn't check my emails, and my office didn't put it  
22 on my file I guess, and I did not see the letter. I  
23 apologize, Your Honor.

24 THE COURT: Ms. Cooper, do you have a copy of the  
25 letter?

Colloquy

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1 MR. RYBECK: I'm looking at it right now, Mr. Teris  
2 showed me.

3 THE COURT: Well why don't I take a break? Because  
4 I'm going to go right to the letter, and you really need to  
5 take a look at it.

6 MR. RYBECK: I apologize, Your Honor.

7 THE COURT: And we'll -- we'll be back in like five,  
8 ten minutes. All right?

9 MR. RYBECK: Okay.

10 THE COURT: So we'll just adjourn for a few minutes.

11 MR. RYBECK: Thank you.

12 (Court in recess 2:53 p.m. to 3:06 p.m.)

13 THE COURT: We're back on the record in case numbers  
14 14-3292 and 14-3323. And all the attorneys who placed their  
15 appearances on the record are still in the courtroom. Mr.  
16 Rybeck, did you have something you wanted to add to the Court?

17 MR. RYBECK: I've had a opportunity to read the  
18 letter, Judge. So --

19 THE COURT: You have now?

20 MR. RYBECK: Yes.

21 THE COURT: And you're prepared to move forward?

22 MR. RYBECK: Yes.

23 THE COURT: All right. So let me just address what  
24 I want to address today. Which begins with what the Court  
25 order of December 22nd, 2017 indicated the Court would be

1 addressing.

2 So let's talk first about requests for admissions.  
3 The Court notes on page 18 in the prior opinion that the City  
4 asserted that plaintiff served untimely requests for  
5 admissions, and that they be stricken.

6 And I indicated I would not request that in the  
7 context of plaintiff's motion, but address it at the next  
8 conference. Here we are. Mr. Rybeck, what is your position  
9 with respect to the request for admissions?

10 MR. RYBECK: Fact discovery was over, and they were  
11 served -- fact discovery was over pursuant to this Court's  
12 order. We had years to serve these requests for admissions.

13 THE COURT: Okay. Ms. Cooper?

14 MS. COOPER: Actually, Mr. Brandes is going to  
15 address this.

16 THE COURT: Mr. Brandes?

17 MR. BRANDES: Thank you, Your Honor. Paul Brandes  
18 speaking. Your Honor, these were served under Rule 36. Rule  
19 36 is not a discovery rule, it is a trial preparation, trial  
20 efficiency rule. As Your Honor knows, under Rule 36, Rule 36  
21 has its own procedure for seeking to compel appropriate  
22 responses, separate and apart from Rule 37.

23 Rule 37 speaks to depositions, requests for  
24 production of documents, interrogatories, and failure to make  
25 the designation under Rule 30(b)(6). It is silent as to

1 requests for admissions.

2 The Third Circuit has not ruled that requests for  
3 admissions are discovery, or trial preparation materials.  
4 That's an open question of the Third Circuit. It's  
5 plaintiff's position, however, that the Rules of Civil  
6 Procedure provide the answer that it is not a discovery tool  
7 so much as it is a trial preparation tool, that there is no  
8 deadline for serving.

9 THE COURT: How many requests did you serve?

10 MS. COOPER: Honestly, Your Honor, I don't recall at  
11 this time. I did look at that, but I couldn't find the  
12 document before I left this -- I had Court this morning as  
13 well, so I just came from my office directly here.

14 THE COURT: Mr. Rybeck, do you know how many were  
15 served?

16 MR. RYBECK: I don't have them with me, Your Honor.  
17 But I believe there's maybe 15 or 20, off the top of my head.

18 MS. COOPER: It is not a huge number.

19 THE COURT: All right. Anything further from either  
20 party?

21 MR. RYBECK: No, Your Honor.

22 THE COURT: All right. I'm going to permit the  
23 plaintiff to -- I'm going to permit any party to serve no more  
24 than 30 requests for admissions. And they can be served by  
25 the end of the month, by January 31st, and then the answers



1 would be due by the end of February, within the 30-day period.  
2 And we'll schedule the remaining completion of final pretrial  
3 order, and set a date certain for dispositive motions before  
4 we're done today.

5 Okay?

6 MR. TERIS: Your Honor, just to clarify, that does  
7 not apply to the county defendants, is that accurate?

8 THE COURT: Well you have a pending summary judgment  
9 motion, correct?

10 MR. TERIS: Yes, Your Honor.

11 THE COURT: So discovery's over vis-a-vis the  
12 County. It's always been that way, other than this issue of  
13 the IA files, correct?

14 MR. TERIS: Yes, Your Honor, and we're only somewhat  
15 related to that, in that we house the files.

16 THE COURT: You possess them.

17 MR. TERIS: Yes. Yes, Your Honor.

18 THE COURT: But they're not directed to you, the  
19 request, per se.

20 MR. TERIS: Correct, Your Honor.

21 THE COURT: All right. So no requests for  
22 admissions between the County and the plaintiff, or vice  
23 versa, because there's a pending summary judgment motion.  
24 Everybody agrees with that?

25 MS. COOPER: I'm fine with that, Your Honor.

Colloquy

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1 MR. TERIS: Thank you, Your Honor.

2 THE COURT: Okay.

3 MS. COOPER: Judge, may I just clarify one other  
4 thing before you move on?

5 THE COURT: Yes.

6 MS. COOPER: Do you want me to re-serve those same  
7 requests for admissions that were already served last year?

8 THE COURT: Yes. Re-serve them and -- because you  
9 might want to -- because you've gotten some additional  
10 information, you may want to revise them.

11 MS. COOPER: Sure.

12 THE COURT: So whatever you want to serve, you need  
13 to serve by January 31st. All right? That takes care of one  
14 item that was specifically and expressly indicated that we  
15 would address today.

16 The next item I want to address is Mr. Rybeck's  
17 certification confirming that all documents that he intended  
18 to use to support any claim or defense in the case has been  
19 produced. Mr. Rybeck, you served such a certification?

20 MR. RYBECK: Yes, Your Honor.

21 THE COURT: It appears plaintiff objects to that.  
22 Ms. Cooper, you have a problem with that?

23 MS. COOPER: Your Honor, my issue with it is that he  
24 did -- Mr. Rybeck's certification did not comply with what the  
25 Court ordered him to certify. There was two different -- two

1 separate parts of the Court's requirement. One certifying  
2 that they turned over all the documents that they intended to  
3 rely upon for -- in their case, and, number two was that they  
4 updated everything pursuant to Rule 26(e). And that is what  
5 is missing.

6 THE COURT: Okay. Mr. Rybeck, I think what happened  
7 is that the form of the order didn't include what was also put  
8 in the order, because on page 10 of the Court order, the Court  
9 required that you also certify that the Rule 26 disclosures  
10 have been appropriately supplemented. Can you please do so?

11 MR. RYBECK: Yes, Your Honor.

12 THE COURT: All right. So the request of the  
13 plaintiff is consistent with what's in the body of the order,  
14 but not in the final order portion of the order, so that's  
15 probably where the confusion came in. And I'll give you ten  
16 days to do that.

17 MR. RYBECK: Thank you, Your Honor.

18 THE COURT: All right.

19 MS. COOPER: Your Honor, may I also address the  
20 other part of that? If you look at my letter is that we know  
21 for certain that they have not updated all of the -- the  
22 documents that were turned over for Rule 26 disclosures,  
23 and/or the ones that Your Honor ordered the City of Camden  
24 defendants to produce.

25 And I specifically put in my letter, for example, my

1 clients' own personnel files and transfer orders, as well as  
2 civil service documents that should be in their personnel  
3 files are not there, and I only asked for the personnel files  
4 of my clients, and the named defendants. I didn't ask for,  
5 you know, everybody in the whole wide world.

6 And those documents are necessary to prove parts of  
7 the claims of plaintiffs' complaint. And they should have  
8 been updated and supplemented as we went along. Each time  
9 when Your Honor ordered them to supplement it the last time,  
10 they were not included. Nothing past a certain point has ever  
11 been updated. None of the current stuff from like 2008  
12 forward has ever been produced in their personnel files. And  
13 they were transferred numerous times, they were given  
14 appointments up and down the promotional scale, depending on  
15 what was happening in the City.

16 And -- and so were all of the named defendants.

17 THE COURT: Mr. Rybeck, your position as to whether  
18 current and 2008 plus personnel records are relevant to this  
19 litigation?

20 MR. RYBECK: If there is transfer orders -- the  
21 plaintiffs, they want the transfer orders, I can go check and  
22 see if they were updated, and I'll go back and look at that,  
23 Your Honor. But I wasn't aware of an update. And if they --  
24 whatever I produced, I can't remember how many years ago I  
25 produced it, but if there's an updated one and I'll certainly

1 check, and if there's any new in there, Your Honor.

2 But as far as the defendants' personnel files, I  
3 don't see how that's relevant at all. Under State v.  
4 Kaszubinski, you just can't ask for the personnel file without  
5 something more. If they're claiming they were not  
6 transferred, or they were transferred in retaliation for  
7 something, I don't see what it has to do with the defendants'  
8 personnel files, Your Honor.

9 MS. COOPER: Your Honor, the purpose of that was to  
10 show that the -- some of the defendants -- in fact, most of  
11 the defendants received promotions that were not permitted  
12 under the Civil Service Rules, which is directly related to  
13 the -- the claims that are in my clients' complaint. He  
14 claimed that they were violating and skirting around the New  
15 Jersey Civil Service Rules using titles, job titles, and  
16 designations that were not permitted.

17 And he complained about those things. And the part  
18 of his retaliation claim is over that. And they were already  
19 produced up until that point, but they just haven't produced  
20 anything else since that time. And, you know, honestly the  
21 reason that they haven't produced it, in my opinion, is  
22 because from 2008 forward is when all of these issues took  
23 place.

24 THE COURT: I'm not sure what that comment means.  
25 What do you mean all these issues took place?

1 MS. COOPER: The issues with using job titles that  
2 are not civil service titles. The issues of promoting people  
3 without an examination. The issues of charging officers  
4 without doing an investigation.

5 All of the things that --

6 THE COURT: And you're saying you don't have them  
7 from 2008?

8 MS. COOPER: Forward.

9 THE COURT: Mr. Rybeck, go back and certify that  
10 you've produced the personnel files that were requested from  
11 2008 through to the date of the filing of this lawsuit.

12 MR. RYBECK: Certainly, Your Honor.

13 MS. COOPER: Your Honor, it actually should be up  
14 through 2013 when the Police Department disbanded, because the  
15 ranks changed all the time. Throughout, my client's rank  
16 changed from captain all the way down to sergeant, then back  
17 up to lieutenant, then back up to captain.

18 THE COURT: So you're looking from 2008 to 2013?

19 MS. COOPER: Correct.

20 MR. RYBECK: That's fine, Your Honor.

21 THE COURT: That's fine. All right. So I'll put  
22 that in the order, and I'll give you ten days to do that,  
23 because we're just looking at updated personnel files.

24 MR. RYBECK: I just have to go to City Hall and get  
25 the files, Your Honor.

1           THE COURT: And that's -- include transfer orders of  
2           the plaintiff and -- plaintiffs, and any named defendants.

3           MR. RYBECK: That's fine, Your Honor. My only  
4           concern is that if there's some kind of medical issue or  
5           something --

6           THE COURT: They're not looking for medical records.

7           MR. RYBECK: Just transfers? That's fine then, Your  
8           Honor.

9           THE COURT: Transfer records and disciplinary  
10          notices.

11          MS. COOPER: Anything to do with promotional pay  
12          changes. Those things have to have a particular form that  
13          shows what the rate is, et cetera. That's what I'm interested  
14          in.

15          MR. RYBECK: That's fine, Your Honor.

16          THE COURT: Okay. All right. That takes care of  
17          that.

18                 Let me take care of some items I'm not going to  
19          address today. Ms. Cooper, you put in your letter that the  
20          privileged logs are deficient, but you didn't tell me anything  
21          more. I've already addressed that in the motion. I'm not  
22          going to rehash what's in the motion. If it wasn't in -- it's  
23          sufficiently detailed in the motion, this letter is not a  
24          opportunity to do that again.

25                 Do you understand that?

1 MS. COOPER: I understand, Your Honor.

2 THE COURT: All right. So I'm not going to address  
3 privileged logs. The file regarding defendant Cuevas, is that  
4 how you pronounce it?

5 MR. RYBECK: Yes, Your Honor.

6 MS. COOPER: Yes.

7 THE COURT: Regarding stealing time, I addressed  
8 that in the order, and I denied it. I permitted you to serve  
9 records by way of subpoena to the Camden County Prosecutor's  
10 Office. You raised that again. I've already addressed it.  
11 I'm not going to revisit my order. Have you served the  
12 subpoena?

13 MS. COOPER: No, Your Honor, because the last time  
14 when we were here Mr. Teris objected to the County having to  
15 do anything. But the problem is that they're so very  
16 intertwined on some of these issues.

17 MR. TERIS: Your Honor, the County is separate and  
18 apart from the County Prosecutor's Office. I don't have a  
19 problem with any subpoena --

20 THE COURT: Okay. Let me see. This is how I said  
21 it in the order. And this is -- I'm just -- I'm not going to  
22 reconsider the order, I'm only going to address that which we  
23 indicated I would address.

24 Because the time line for reconsideration has  
25 expired, and I'm not going to reconsider what I ordered in the



1 order. So in the order I indicated that:

2 "Deny the request without prejudice in light of the  
3 defense counsel's statement that the entire investigatory file  
4 has been produced and that the CCPO may be in possession. The  
5 Court shall address whether plaintiff shall be permitted to  
6 seek this information by way of subpoena."

7 All right. You have ten days to serve your subpoena  
8 on the CCPO for this information. That takes care of that  
9 issue.

10 The DCP&P file of Defendant Cuevas, which is item  
11 six in your letter -- I think it's six in your letter -- I  
12 can't -- in the Court's prior order, I indicated:

13 "Plaintiffs have not demonstrated how the specific  
14 underlying details of the investigative report is relevant to  
15 the plaintiffs' claims."

16 I've denied that portion of the motion. I don't see  
17 any basis to readdress it at this time. A letter is not a  
18 motion for reconsideration. And so there's nothing for me to  
19 address. It's already been denied.

20 MS. COOPER: Your Honor, just with respect to a  
21 motion for reconsideration, I did not consider this to be  
22 something that we could either file for reconsideration or  
23 appeal until after this hearing on these issues that we're in  
24 here. But if the Court, you know, feels differently, you  
25 know, I will take whatever step's necessary to rectify that.

1 THE COURT: Where in the order does it say you're  
2 not to file a motion for reconsideration of any of the matters  
3 that the Court ruled on, as opposed to indicated that we would  
4 be addressing it at the conference?

5 MS. COOPER: There's no language that says it's not,  
6 you know, just to prohibit it, it just was the fact that it --  
7 that the defense counsel is ordered to, you know, file a  
8 certification of certain things. And then, you know, there  
9 was no opportunity, or nothing in here to say that I have a  
10 opportunity to rebut that, which I did in the letter. But --

11 THE COURT: What -- the defense counsel wasn't  
12 ordered to do anything with respect to this issue.

13 MS. COOPER: Not on this particular one. I'm just  
14 saying throughout the course of the opinion, that's how I read  
15 it, and that was my understanding that until the Court heard  
16 these issues that were outstanding, that it wouldn't be, you  
17 know, something that couldn't be appealed.

18 THE COURT: Well I don't know where that  
19 understanding came from. There were a number of items the  
20 Court ruled against, a number of items the Court ruled for,  
21 and a number of items the Court will address at the next  
22 conference. To the extent I said I'll address it at the next  
23 conference, we're going to address it.

24 As I understand from my Court order, I did not say I  
25 was going to revisit, or consider, or deny without prejudice

1 to discuss at the conference anything with respect to the  
2 DCP&P file. So I'm not going to address it today, as I've  
3 already addressed it.

4 Okay. What I did indicate I would be addressing  
5 today would be the scope of the IA files. I indicated I  
6 thought perhaps sampling would work, and we would address it.  
7 So I'll hear from the plaintiff on the IA files on sampling.

8 MS. COOPER: Your Honor, I do not believe that  
9 sampling will work. And I also believe that the  
10 characterization of what the plaintiffs are claiming is the  
11 pattern and practice is -- is not exactly accurate. In  
12 Sosinavage in particular, but it's the same through both of  
13 them. I just don't know the paragraph numbers for each, but  
14 it's -- the pattern and practice claims are, like paragraph  
15 193 through two hundred and something.

16 And in there it's very specific where he says that  
17 they created a pattern and practice of not investigating  
18 certain files, not logging certain files, prohibiting them  
19 from investigating certain files. And the deposition of  
20 Wysocki and Lynch seems to confirm parts of those things.

21 But without looking at the log, the actual numerical  
22 log, which we do have, versus the files, there is no way that  
23 you could possibly prove a pattern and practice without having  
24 them say, well, how many are statistically relevant?

25 How many out of 397 files for the year is proper?

1 You know, if you find a mistake on one or two, is that -- is  
2 that a pattern or practice? There's no way for a plaintiff to  
3 prove a Monell claim on the allegations that are here. And  
4 the one thing I do agree with them on, is that that this is  
5 not like an excessive force claim where you're just looking at  
6 excessive force complaints, or excessive force, or other sorts  
7 of torts.

8 This is a situation where he says he was prohibited  
9 from investigating files that had criminal elements to them.  
10 He was -- he was ordered to charge individuals without  
11 completing a full and complete investigation with termination  
12 offenses, and just major discipline, which under the Attorney  
13 General Guidelines is also not permitted. And they had a  
14 custom and practice of bringing people in and forcing them to  
15 be interviewed, sworn under oath, which are not permitted by  
16 the Attorney General Guidelines either.

17 And my clients testified that they were subject to  
18 those things. And so far, because we don't even have the  
19 updated index cards and so forth, and the opportunity to  
20 review all of the files, we don't know some if those things  
21 are not logged on there. For example, Captain Carmichael  
22 testified that he was brought in over an issue that he was  
23 told to discipline somebody over not wearing their hat, and  
24 then he didn't -- they ended up sending Lieutenant Wysocki  
25 down, and he was put on a recorder, and all these other

1 things. Well there's no IA file that was ever produced on  
2 that.

3 There was nothing on his index card that was  
4 produced on that. A union rep was there, his union president  
5 was there. So these are all types of things where we need to  
6 be able to go through the files and see if there even is  
7 something that exists there. That in addition -- if I could  
8 just finish, during the course of the deposition with  
9 Lieutenant Wysocki and Lynch, they both testified that they  
10 closed a huge number of files with an administrative closure,  
11 and there's only a very limited ability to do that under the  
12 Attorney General Guidelines, and that was from 2012 and  
13 thirteen, that both of them said that.

14 And they just signed off on them, without reviewing  
15 the file, which is also not permitted under the Attorney  
16 General Guidelines. So he -- I tried to get a description  
17 from both witnesses as to what exactly they looked at in order  
18 to close the file, and he just said that he had a summary.  
19 Well I don't know what he's talking about, but I need to be  
20 able to review those things to what the Attorney General  
21 Guidelines require.

22 And so does our expert, candidly. So that was why  
23 before I offered to have, you know, staff -- I have four  
24 people that could go there with scanners, we don't even have  
25 to photocopy the things, scan the files, and if the files are

1 really empty, as Wysocki testified, except for one or two  
2 sheets of paper for all of twelve and thirteen, it really  
3 should be a matter of one day.

4 THE COURT: What, if I could ask you, if you  
5 contemplate specifically the scope of the IA files you're  
6 looking for?

7 MS. COOPER: Well definitely every one that's  
8 administrative in nature. But beyond that, you know, there's  
9 allegations my clients made that when he made complaints about  
10 -- against other officers, or against the process, he -- those  
11 investigations don't appear on their IA card.

12 For example, Cuevas' file doesn't appear on that IA  
13 card, the one that we just talked about. Or there was pages  
14 missing out of it. There's nothing that appears on his  
15 record. All of that is all relevant.

16 My client was precluded from investigating the DCCP  
17 file, which is something that another officer was terminated  
18 for. Same exact thing.

19 THE COURT: Well but just, if you could articulate  
20 for me whose IA files you would want to see, and the years?

21 MS. COOPER: It's not whose, Your Honor. It's all  
22 of them.

23 THE COURT: All IA files for whatever the allegation  
24 is?

25 MS. COOPER: No, Your Honor. I put in my -- I

1 believe it was in my letter, there is like 90 files for --  
2 it's 90 files, I think, for 2008, something like -- to that  
3 effect. Ninety-seven files for 2008. That was out of  
4 three --

5 THE COURT: Let me just read your letter.

6 MS. COOPER: I'm sorry.

7 THE COURT: So --

8 MS. COOPER: It's in your opinion on page four, Your  
9 Honor.

10 THE COURT: Okay.

11 MS. COOPER: Ninety-seven files from 2008. And I  
12 believe that was out of 347, somewhere in that vicinity. Then  
13 for 2009, I don't have the attachment here, but I believe it  
14 was a hundred and something out of, again, almost 400 files.  
15 And then 2010 to thirteen was all of them.

16 THE COURT: And your request for these IA files  
17 deals with which of your claims?

18 MS. COOPER: It deals with both the plaintiffs'  
19 claims on the Monell claim against the City for the pattern  
20 and practice claims.

21 THE COURT: Pattern and practice of what?

22 MS. COOPER: Pattern and practice of failing to  
23 follow the Attorney General Guidelines with respect to  
24 logging, investigating, charging, all of it.

25 THE COURT: And why is that relevant to a claim or

1 defense in your case?

2 MS. COOPER: Because my clients actually complained  
3 about that, and they were then retaliated against as a result  
4 of it. So that's what forms the whole basis of the claim  
5 against the City, and City defendants.

6 THE COURT: So when the Court wrote in the opinion  
7 that it appeared that you were seeking these files to --

8 MS. COOPER: I think Your Honor used the word like  
9 altered --

10 THE COURT: Alter -- let me -- I have it right here.  
11 That's what you're looking for?

12 MS. COOPER: Right. It's not altered, though. In  
13 some instances, people who were -- they were just never  
14 investigated. Some of them were just never charged. Some of  
15 them were -- they're just failing to follow the guidelines,  
16 which are very specific as to how Internal Affairs records  
17 have to be maintained.

18 That's why the City of Camden has the little index  
19 cards that we first started with. That was, back in the day,  
20 the way that they tracked an officer's offenses or charges  
21 throughout his entire career with the Police Department.

22 And some officers would have multiple of those index  
23 cards, and then others might none. However, as time  
24 progressed, it became something that was computerized. That's  
25 just one example of the requirements that the Attorney General



1 Guidelines for Internal Affairs policies and procedures  
2 require.

3 THE COURT: All right. Thank you. Anything, Mr.  
4 Rybeck?

5 MR. RYBECK: Judge, I think it was sometime in March  
6 of 2010 the plaintiffs were transferred out of Internal  
7 Affairs. So if they complained about certain cases occurring  
8 prior to their transfer, that's one thing, but I don't know  
9 what -- I'm not aware of any complaints they made 2012 or 2013  
10 about officers not being investigated, or investigations not  
11 being done properly.

12 If they had a specific complaint, we would have no  
13 problem giving our best specific file.

14 THE COURT: Say that slower.

15 MR. RYBECK: If they have a specific complaint then  
16 we can -- we have no problem giving our best specific file.  
17 But as far as just a broad, general claim that they're not  
18 investigating things properly, what does that have to do with  
19 these plaintiffs in 2012 or 2013?

20 THE COURT: What about 2010, 2009, 2008?

21 MR. RYBECK: If there's specific cases they're  
22 saying that wasn't done, I understand that, Your Honor. And  
23 from our understanding, the actual IA cases listed in the  
24 complaint, the actual instances, everything listed in the  
25 complaint about specific instances where something was done

1 wrong, or allegedly done wrong, those files have been  
2 produced, Your Honor.

3 MS. COOPER: That is absolutely not correct, number  
4 one. But, number two, a pattern and practice is not just  
5 about specific instances. That's exactly why and how Monell  
6 makes liability against the policy makers of the City. You  
7 have to show that it's not one or two instances, it's not one,  
8 or two, or three, or four. It is a pattern and practice and  
9 custom that has evolved.

10 And that is exactly what my clients have alleged.  
11 And, in fact, my clients testified multiple times after 2009  
12 when the complaint was filed, where they -- where it's under  
13 oath where they've -- Wysocki himself has admitted that he  
14 didn't do investigations.

15 THE COURT: Why would you need 2012 and 2013? If  
16 the retaliation that's alleged to have occurred, occurred in  
17 2010 --

18 MS. COOPER: It was continuing and ongoing, Your  
19 Honor. They were denied the opportunity to take promotions  
20 when other people were not. They appealed it to civil  
21 service. By the time the appeal came though it was moot.  
22 There was a whole load of things, all the way up until the  
23 very end. At one point in time, Lieutenant Sosinavage  
24 testified that he was the only City of Camden police officer  
25 in the entire force that was forced to work every weekend for

1 two thousand -- I believe that was 2011 or twelve.

2 So there's -- the retaliation wasn't one or two  
3 instances of, it was continuous and ongoing.

4 THE COURT: All right.

5 MR. RYBECK: Judge, may I respond to that?

6 THE COURT: Yes.

7 MR. RYBECK: It's continuous and ongoing for  
8 complaints he alleged he made while he was in the Internal  
9 Affairs about he being told to not investigate things, or him  
10 being -- he alleges that he was told, you don't need to do --  
11 interview 20 people, just charge the person, we'll have the  
12 hearing, essentially.

13 And then that was when he was in Internal Affairs.  
14 What does whether some random officer in 2012, whether he was  
15 properly investigated or not, have to do with whether or not  
16 plaintiffs were retaliated against for making a complaint in  
17 2009?

18 MS. COOPER: That is absolutely incorrect.

19 MR. RYBECK: And, Judge, if there's a pattern and  
20 practice they're alleging here, he was in Internal Affairs, he  
21 can tell us which files these were allegedly done. He was in  
22 charge of the unit.

23 MS. COOPER: Not after he was not there.

24 MR. RYBECK: I understand after he was not there.  
25 But the problem is, Judge, that what does whether or not

1       they're investigating cases properly three years after he was  
2       transferred have anything to with this case?

3               MS. COOPER: It has everything to do with the case,  
4       Your Honor, because that is what precipitated my clients  
5       beginning -- retaliation against my clients. And in fact my  
6       clients testified, and especially Sosinavage, in multiple  
7       disciplinary matters in New Jersey Superior Court, in  
8       Administrative Law Division, in hearings in which Mr. Rybeck  
9       is very well aware, because his law firm was there, and even  
10      regular other litigation as to what was done during his  
11      tenure, versus what was done afterwards.

12             So it is very important, and it is exactly what is  
13      required under Monell. I specifically went through and made  
14      sure of what I needed in the complaint, as well as in the  
15      files to be able to show this. The Attorney General  
16      Guidelines layout every single thing that should be in an  
17      attorney -- in the files.

18             THE COURT: Well let me ask this question. Let's  
19      say you get 2013 IA files, let's say there's 20. And let's  
20      say there's non-compliance with the Attorney General  
21      Guidelines on one of the 20. What relevance -- or let's say,  
22      alternatively, there's not compliance in all 20, what  
23      relevance does that have to your clients' claim of  
24      retaliation?

25             MS. COOPER: Because it shows that the pattern and

1 practice actually existed, and it continued up until the end  
2 when my client was terminated. And the fact is, even though  
3 the County -- I mean, not terminated, laid off with everybody  
4 else at the end of the thing. The County has made the  
5 argument that these are separate, two distinct things, which  
6 generally I might agree. However, you have the same personnel  
7 involved, and his claim then -- Sosinavage's claim continues  
8 that he was not properly hired over, or given the opportunity  
9 to be hired at the County. And it's Carmichael's claim  
10 continues that he was then further discriminated and  
11 retaliated by the same exact people who just wearing a  
12 different hat and uniform. So it is very relevant. And it  
13 did continue all the way up -- and my clients testified  
14 extensively and were questioned extensively about it at their  
15 depositions.

16 So it is --

17 THE COURT: Okay.

18 MR. RYBECK: Judge, with Monell it has to be the  
19 driving force behind the constitutional violation. If some  
20 officer wasn't properly investigated in 2012, it has nothing  
21 to do with the plaintiffs. How that that be the driving  
22 force?

23 THE COURT: Well their argument is that -- that it's  
24 a little broader than that. That -- say an officer in 2012  
25 didn't do the investigation, it's continued pattern and

1 practice. And because the plaintiffs are -- had raised that  
2 issue years ago, they're still retaliated against because  
3 there's a claim, I guess, that they now want to expose this  
4 continued pattern or practice. I think that's where the  
5 plaintiff's going, is that right?

6 MS. COOPER: Basically, Your Honor. And in addition  
7 to that, my clients testified in multiple of the disciplinary  
8 hearings for the other officers, not all are known, but of the  
9 ones that we did testify at, of course I know those officers.  
10 And so it's -- those things were not only occurred in 2009 or  
11 2010, it continued on, and on, and on, all the way up until  
12 the end.

13 THE COURT: All right. Well discovery has to be  
14 relevant and proportional to the needs of the case. And so in  
15 light of plaintiff's statement that the plaintiff will go in  
16 and just make the copies, what's the argument on  
17 proportionality, if the Court determines that there's been  
18 enough of a showing of relevance? Now, remember, it's not  
19 admissibility, it's relevance on the IA files.

20 MR. RYBECK: Well, Judge, on proportionality we have  
21 four hundred something files a year, these are confidential  
22 Internal Affairs files that --

23 THE COURT: Well let's see, plaintiffs' looking for  
24 ninety-seven in 2008.

25 MR. RYBECK: Yes.

1 THE COURT: A hundred in 2009, and then 2010,  
2 eleven, twelve, and thirteen, four more years.

3 MR. RYBECK: That's approximately 1,400 files, Your  
4 Honor.

5 THE COURT: But plaintiff has said, I'm going to go  
6 in and just scan them all in, no cost to the defense.

7 MR. RYBECK: Um -- I --

8 THE COURT: No time limit to the defense.

9 MR. RYBECK: I understand that, Your Honor. I think  
10 it's really a matter of showing good cause here and relevance  
11 to that. And I don't see the relevance still here, Your  
12 Honor.

13 THE COURT: No, but I'm saying, let's say I  
14 determine that they're relevant to the claim of defense in  
15 light of the argument of establishing a pattern or practice  
16 that continued in light of an argument that the retaliation  
17 continued.

18 MR. RYBECK: I'm assuming that's your -- okay.

19 THE COURT: I thought you had raised initially a  
20 proportionality argument, but it seems like plaintiff  
21 addresses that by saying, look, we don't want you to copy it,  
22 we'll just come in and scan them all.

23 MR. RYBECK: I think that would be a task that would  
24 take weeks, Your Honor, in light of how big these files are,  
25 and how big that room is that I've been in, Your Honor.

1 THE COURT: The plaintiff says she could do --

2 MR. RYBECK: It's -- there's 1,400 files, some of  
3 these in boxes.

4 THE COURT: -- it in a day.

5 MS. COOPER: Your Honor, Mr. -- I mean, Lieutenant  
6 Wysocki and Lynch testified, number one, they're in the very  
7 same room that they were when it was the PAB versus the County  
8 PAB. I questioned him extensively about that at his  
9 deposition. He said they've not been moved. The archive  
10 files are all in the exact same place.

11 The other part of that is, Your Honor, that the City  
12 of Camden, regardless whether it has a Police Department or  
13 not, is the one who is the owner of those files, and under the  
14 Attorney General Guidelines required to maintain those files,  
15 the City, for 75 years.

16 So it has nothing at all to do with the County.  
17 However, the proportionality is, Your Honor, we have economic  
18 experts that we've produced in this case already. I don't  
19 know where the numbers are, but I believe -- they're in seven  
20 figures for the damages these plaintiffs have suffered.

21 And so they should be allowed to have the discovery  
22 to go through if there's -- if the files are as Wysocki and  
23 Lynch, who are the two deputy chief of police now at the  
24 County, testified, that there's probably one or two pieces of  
25 paper in all of the files for twelve and thirteen.



1           So it's, again, for me --

2           THE COURT: All right. Well here's how I --

3           MS. COOPER: -- I don't --

4           THE COURT: I figured out a way to do it. Let's do  
5 it this way --

6           MR. RYBECK: Judge --

7           THE COURT: -- yes?

8           MR. RYBECK: -- just as far as one or two pieces of  
9 paper, that's not every single case. They didn't do that in  
10 all of the cases in twelve and thirteen, that's just not what  
11 they testified to.

12           THE COURT: Okay. Well the best way to do that is  
13 -- here's what I'm going to do. I think it's -- I find that  
14 the plaintiff has demonstrated through her argument today the  
15 relevance, at least through 2010, for all the IA files that  
16 she's asked for.

17           And I'm going to permit the plaintiff to go to the  
18 City, or wherever they're housed, and make the copies,  
19 pursuant to a confidentiality order, which I assume you have  
20 in place, is that correct? There's no issue on that?

21           MR. RYBECK: Yes, there is.

22           MS. COOPER: Yes, Your Honor. We do already have  
23 that, yes.

24           THE COURT: All right. So that's for 2008, 2009,  
25 2010, all the way through the end of 2010. And I'm no longer

1 going to require a sampling, because I think the plaintiffs'  
2 arguments are well taken about, if a sampling then creates  
3 problems on the expert report, unless the defendants were  
4 prepared to agree that any sampling was a sufficient basis to  
5 make any opinion of the expert.

6 Which is think is the argument you made, is that  
7 correct, Ms. Cooper?

8 MS. COOPER: Basically, Your Honor, yes.

9 THE COURT: Okay. Then we get to two thousand --  
10 and I'm agreeing to go through -- I'm permitting you to go  
11 through all of 2010, even if the termination, or the --  
12 what --

13 MR. RYBECK: Transfer in March of 2010.

14 MS. COOPER: Transfer.

15 THE COURT: So then we have 2011, twelve, thirteen.  
16 So I'm also going to permit the plaintiff to go through 2011,  
17 without prejudice to come back to me for 2012 and 2013,  
18 because let's see how long it takes to get 2011. I mean, if  
19 they're very voluminous and detailed, and it's different than  
20 what Ms. Cooper has in mind, maybe she doesn't even want 2012  
21 and thirteen. So in addition, I will give the parties a  
22 opportunity when they come back to me, when you're there, to  
23 call me, you know, whatever date you're going to set there,  
24 see what it looks -- the 2012 and thirteen look like.

25 Mr. Rybeck, see how many files we're talking about.

1 I don't even know how many files we're talking about, right?

2 MR. RYBECK: It's approximately 400 a year.

3 THE COURT: Yes. So how thick are they? Are they  
4 all one page ones?

5 MR. RYBECK: It depends on the allegation, Your  
6 Honor.

7 THE COURT: All right. So how many of them are two  
8 pages, and how many of them have 50 pages in them? That's the  
9 issue.

10 MR. RYBECK: Yeah, I've just been in the room and  
11 I've seen the giant stacks for one particular year, Your  
12 Honor.

13 MS. COOPER: And, Your Honor, just in 2013, just so  
14 we're clear, it's only January through May -- I mean, January  
15 through the end of April. So it's four months of 2013, it's  
16 not an entire year.

17 THE COURT: Four months of 2013.

18 MS. COOPER: Thirteen, yes.

19 MR. RYBECK: The Police Department disbanded.

20 MS. COOPER: Right. So there's none --

21 THE COURT: And the whole year of 2012.

22 MS. COOPER: Right.

23 THE COURT: And I indicated you could do 2008, 2009,  
24 2010, and I'm permitting you to go through 2011.

25 MS. COOPER: Yes, Judge.

1           THE COURT: Without prejudice to contact the Court  
2 about whether I will permit you to do 2012 and 2013. The  
3 reason I say that is, the longer the temporal element -- the  
4 further that date is from the date of the transfer, the Court  
5 finds the relevance may weaken.

6           MS. COOPER: Right. But, Your Honor, it's not just  
7 one transfer. I think that's where it -- it wasn't just being  
8 transferred out of IA, it was multiple transfers, multiple  
9 different things. In fact, in -- in Carmichael's case, we had  
10 to grieve the hours that they were forcing him to make, which  
11 violated the CDA, which he won that grievance.

12           So it's a continuing thing that happened, that's why  
13 it's a continuing violation that's alleged. But I will start  
14 with this, and I have no issue with, you know, contacting the  
15 Court when we're there.

16           THE COURT: When you're there take a look at what  
17 we're talking about for 2012, and the four-month period of  
18 2013. And then contact the Court with further argument about  
19 why 2012 and 2013 would be relevant to any claim of the  
20 plaintiff, in light of the fact that the plaintiffs were no  
21 longer in the IA department.

22           MS. COOPER: Sure.

23           THE COURT: And I'll hear from Rybeck as well. And  
24 I'll determine not only whether I permit -- whether I find  
25 those documents to be relevant under Rule 26, but also

1 proportional discovery.

2 MR. RYBECK: Thank you, Your Honor.

3 THE COURT: Okay? So when can they be made  
4 available? If they're just sitting in a room, you can get  
5 that done before the end of -- let's say in the middle of  
6 February?

7 MR. RYBECK: Yeah. We can make an appointment, Your  
8 Honor. That's fine.

9 MS. COOPER: Is there any objection to the -- to the  
10 bringing of laptops and scanners so we can scan them rather  
11 than copy them? Because I think for everybody's sake, using  
12 electronic copies is far better than making paper copies.

13 MR. RYBECK: Are you like looking to take pictures  
14 of them or --

15 MS. COOPER: No, scanning. A scanner that's hooked  
16 to a laptop.

17 MR. RYBECK: Okay. It's just --

18 MS. COOPER: And it just scans it right in from --  
19 into a PD --

20 THE COURT: It's all subject to a confidentiality  
21 order. But whether it's copied or scanned --

22 MR. RYBECK: The other thing is, there's audio  
23 recordings, there could be video recordings, what about those?  
24 That's an issue.

25 MS. COOPER: Well I think generally, Your Honor, if

1       they are, we can make a list of something, if it's absolutely  
2       necessary. I'm not on a fishing expedition, it's more  
3       about --

4               THE COURT: Well you don't really need to see the  
5       underlying evidence of the IA. You need to see what was done.

6               MS. COOPER: Well partially true, Your Honor, except  
7       that when someone's charged with a termination offense, for  
8       example, or a major discipline offense, which is an offense  
9       that carries a charge of more than five days of either  
10      suspension or a fine, those things have to be done in a  
11      different manner than the ones that are less than that.

12              You can have -- you can have an Internal Affairs  
13      investigation, you know, for -- where the person just gets a  
14      written warning, for example. That does not require the same  
15      sort of investigation.

16              THE COURT: Okay. But it's -- it's a unique  
17      argument. It's different than your excessive force type cases  
18      where you actually have to see what happened and what the end  
19      result is. Here, the argument, as I understand it from the  
20      plaintiff is, you should have interviewed witnesses and  
21      witnesses weren't interviewed. And we complained about that.  
22      We were documenting and pushing through these IA complaints  
23      without the requisite investigation that's required. That's  
24      the general argument, correct?

25              MS. COOPER: Sort of, yes. But, in fact, in one

1 sergeant's case in particular that I handled the appeal, it  
2 was a three or four day trial before Judge Orlando. So there  
3 is -- it's --

4 THE COURT: But what difference does it make what  
5 happens before Judge Orlando? Your argument is that your  
6 client complained because they were pushing under the rug  
7 these IA investigations.

8 MS. COOPER: Well not just pushing them under the --  
9 they would charge an officer without doing the investigation  
10 that's required. In the investigative file there should be  
11 something like a chronological list --

12 THE COURT: Exactly.

13 MS. COOPER: Yes. And there should be an  
14 investigative memorandum that's done that then substantiates  
15 how the charges are preferred, or not, against an officer.

16 THE COURT: So if there's a tape recording of a CI,  
17 or a witness --

18 MS. COOPER: Yes.

19 THE COURT: -- you don't need to listen to the tape  
20 recording.

21 MS. COOPER: I'm not going to --

22 THE COURT: You just mark there is a tape recording  
23 in the file.

24 MS. COOPER: Correct.

25 THE COURT: That's what I'm getting at.

1 MS. COOPER: Yes. Absolutely.

2 THE COURT: So you don't need to make copies of the  
3 video, or the recording, just a notation that there was one in  
4 the file.

5 MS. COOPER: Correct. That's exactly right.

6 THE COURT: All right. So we're all in agreement on  
7 that.

8 MR. RYBECK: Thank you, Your Honor.

9 THE COURT: All right. So what about the scanning  
10 then, any objection?

11 MR. RYBECK: I don't have any issue with scanning  
12 them. There just needs to be somebody present during this  
13 period when Ms. Cooper's in IA.

14 THE COURT: Okay.

15 MR. RYBECK: And we request that it be done during  
16 business hours.

17 MS. COOPER: Absolutely.

18 THE COURT: No issue on that.

19 MR. RYBECK: I don't think Internal Affairs work --  
20 they work banker's hours, I think.

21 THE COURT: Well for the sake of all counsel having  
22 also a regular life besides a lawyer life, do it during the  
23 business hours Monday through Friday. Okay?

24 MR. RYBECK: We'll coordinate that with plaintiff.

25 THE COURT: All right. And then if it turns out



1 it's going to be a lot longer than you thought, because I  
2 think Ms. Cooper you said two, three days max, you'll advise  
3 the Court.

4 MS. COOPER: Yeah. If the -- if the testimony of  
5 the other officers, but if it turns out something different,  
6 I'm more than happy to contact the Court.

7 THE COURT: All right. So we're clear, and I hope I  
8 get it right in my order, we're going to permit that the IA  
9 files be provided to the plaintiff for scanning and copying,  
10 subject to an agreed upon confidentiality order --

11 MR. RYBECK: We already have a confidentiality.

12 MS. COOPER: Yes.

13 THE COURT: Yes. So it's subject to that. Also,  
14 I'm making no ruling on whether these documents are  
15 admissible. They can be, however, be served -- submitted to  
16 plaintiffs' expert for purposes of the expert report.

17 Ninety-seven files in 2008, 100 files, I think -- a  
18 hundred and some files in 2009. Do we have the exact number?

19 MS. COOPER: I didn't bring the spreadsheet, Your  
20 Honor, but it was in the letter of April the 17th to Mr.  
21 Eastlack.

22 THE COURT: And you say it's in my opinion, right?  
23 Do I have it in the opinion?

24 MS. COOPER: You just said it was narrow. Because,  
25 honestly, the -- I didn't attach the Excel spreadsheet copies,

1 because they're confidential, so I didn't want to have them  
2 attached. But it is -- it's a narrow number in there.

3 THE COURT: Okay.

4 MS. COOPER: There was an attachment that delineated  
5 what -- which files.

6 THE COURT: So files for 2010 and 2011, not 2012,  
7 and not 2013, without prejudice to the plaintiff's right to  
8 contact the Court upon getting into the IA room and advising  
9 whether there will be a renewed request for the 2012, 2013.  
10 Okay?

11 MR. RYBECK: Thank you, Your Honor.

12 MS. COOPER: Thank you, Your Honor.

13 THE COURT: And the copies, once you make them,  
14 you'll make them available to defense.

15 MS. COOPER: Absolutely. Yes.

16 THE COURT: Okay. That takes care of item two in  
17 your letter. The index cards, that's item three in your  
18 letter. The Court notes that the defendants already assert  
19 that they produced all the versions of the index cards in  
20 their possession.

21 And in light of that, the Court doesn't see a basis  
22 to make any further ruling in this matter.

23 MS. COOPER: Your Honor, if I could? I tried to  
24 explain it as succinctly as possible in my papers, but the  
25 index card, as I've indicated to Your Honor, is something was

1 required under the Attorney General Guidelines so that each  
2 officer's charges or discipline throughout his or her career  
3 is listed in one place. As time went on it changed from an  
4 actual paper index card to a computerized database, or an  
5 Excel spreadsheet.

6 THE COURT: Let me just cut you off, only because I  
7 already ruled on your arguments.

8 MS. COOPER: Okay. But, Judge, what I'm trying to  
9 get at is, they indicate that they've produced them, and  
10 you're satisfied with that. However, I showed in my papers  
11 that they didn't, and there's no -- there's seven instead of  
12 eight that -- and Your Honor notes that in the opinion. And  
13 in addition to that, there's nothing that says which one is  
14 actually the most up-to-date and current.

15 I mean, if they want to stipulate to it then --

16 THE COURT: I considered your arguments. And I  
17 indicated that the -- that defendant has a certification that  
18 every version of the IA index cards have been produced. So if  
19 you still believe that there's something that's been withheld,  
20 or you want a certification, then submit that by way of your  
21 request for admissions.

22 MS. COOPER: Sure.

23 THE COURT: All right. But I've ruled on this  
24 issue.

25 And of course, if it turns out that something gets

1 produced that the certification's wrong, you'll have your  
2 rights under Rule 37, and/or 36.

3 MS. COOPER: Your Honor, in the event that I served  
4 the request for admissions, as Your Honor's indicated, with  
5 respect to the index cards, because obviously they are four of  
6 the defendants and then my two, so that's six, am I permitted  
7 to then serve it with -- in the event that there's a denial  
8 that they attach whatever correct document is to replace that?

9 THE COURT: Well you can serve the request for  
10 admissions consistent with what the Rules permit.

11 MS. COOPER: Okay.

12 THE COURT: All right. So I took care of items  
13 number five and number six in your letter. So that leaves us  
14 to the request to re-depose the defendants due to subsequently  
15 produced documents. And the Court notes, really that request  
16 might have been mentioned briefly in your motion, but not  
17 articulated who you wanted to depose, and why, and how, and  
18 what documents you've been produced that warrants  
19 re-deposition.

20 MS. COOPER: Well, Your Honor, I think I did say in  
21 there that the defendants were ordered to produce --  
22 re-produce the documents that were not correct and supplement  
23 them prior to the depositions of the witnesses, and they did  
24 not do that.

25 I didn't even have the time and opportunity, and in

1 fact it's documented in prior letters to the Court, to even go  
2 through all of those documents prior to deposing them. Some  
3 of the documents were actually produced during the depositions  
4 of those witnesses. So I had no opportunity to review them  
5 whatsoever.

6 So I feel that that is prejudicial. But most  
7 significantly, I did not get the deposition of Chief Thomson,  
8 because that was noticed, then it had to be changed, then he  
9 wasn't available. And that has never been addressed since  
10 last year. And then the motion was filed about the rest of  
11 the discovery. And so he is definitely still -- I need that  
12 deposition. And there was -- well, the whole issue with  
13 Cuevas, he refused to answer questions at his deposition. I  
14 don't have his deposition transcript here in front of me.

15 But I perhaps can file a separate motion on that.

16 THE COURT: Well I'm done with the discovery in this  
17 case, as I see it, other than what I've just permitted today.  
18 So -- and whatever I ordered previously. So when you took his  
19 deposition -- when was that?

20 MS. COOPER: It was last -- right before the motion  
21 was filed.

22 THE COURT: So I'm -- I'm -- you know, that's not  
23 even in your letter, is it?

24 MS. COOPER: In this particular letter? Yes. It  
25 says the re-deposing of the defendants.

1 THE COURT: So you articulate defendant Thomas --

2 MS. COOPER: Thomson.

3 THE COURT: -- Thomson.

4 MS. COOPER: I just said I never got the opportunity  
5 to take his deposition, Your Honor. Because it was changed  
6 and moved, and then he was not available.

7 THE COURT: Okay. Well I'm not going to permit on  
8 this record any re-deposition of defendant Cuevas.

9 MS. COOPER: Cuevas.

10 THE COURT: So discovery on the depositions are  
11 done. You're entitled to serve your admissions. You're  
12 entitled to get the IAs that I just permitted.

13 And you'll get a certification from Mr. Rybeck on  
14 the 26(e) issue. And we will be done, and we'll have a date  
15 for your expert reports. And I would like you to be able to  
16 articulate to me, once you get the IA files, when you think  
17 you'll be in a position to serve your expert reports.

18 MS. COOPER: Sure.

19 THE COURT: But I think you need to make sure that  
20 that production goes in accordance with how you think it's  
21 going to go.

22 MS. COOPER: Sure.

23 THE COURT: So that leaves your request, as I see  
24 it, to depose someone who's never been deposed.

25 MS. COOPER: Well, yes, even though I had noticed

1 it.

2 THE COURT: And what is the City's position on that?

3 MR. RYBECK: Judge, I mean --

4 THE COURT: I mean, was it scheduled before the  
5 close of discovery, and was it canceled by the City?

6 MR. RYBECK: I -- Mr. -- it's now Judge Eastlack,  
7 was handling the case at that time, so I was not privy to the  
8 -- I know it was scheduled and it was pushed off. The reason,  
9 I don't know. I don't think Mr. Teris knows. I wasn't -- I  
10 was not part of the case at that point.

11 MR. TERIS: I believe that Ms. Cooper may have  
12 delayed it once. And then it may have been delayed by Mr.  
13 Eastlack after that. But I'm not sure --

14 MR. RYBECK: But it was -- it just never happened,  
15 Your Honor, and then that's essentially --

16 THE COURT: But it was scheduled prior to the end  
17 of --

18 MR. RYBECK: Correct.

19 THE COURT: All right. So I'm going to permit that  
20 deposition. And it should be done by February the 28th.  
21 Okay?

22 MS. COOPER: Your Honor, if I could just on that  
23 issue. I would like to be able to see some of the IA files  
24 first in order to be able to get that deposition. That's why  
25 the --

1 THE COURT: That's why you're supposed to do them --  
2 the IA files by the middle of February.

3 MS. COOPER: Right.

4 THE COURT: And then you schedule the deposition by  
5 the end of February.

6 MS. COOPER: Okay.

7 THE COURT: So the IA files, I want that, if at all  
8 possible, to be done the first week of February, but no later  
9 than February the 15th.

10 MR. RYBECK: Certainly, Your Honor.

11 THE COURT: I mean, they're there, ready to go,  
12 right?

13 MR. RYBECK: Yep.

14 THE COURT: And then the -- is it Chief Thomson?

15 MR. RYBECK: Yes, Your Honor.

16 MS. COOPER: Yes.

17 THE COURT: Chief Thomson can be deposed no later  
18 than February 28th. We will have a phone call in early March,  
19 at which time I will set dates for expert discovery. What  
20 kind of experts do you anticipate having?

21 MS. COOPER: We have a police policies and  
22 procedures expert. We've already produced an economic expert.

23 THE COURT: So that's it? Just one more expert?

24 MS. COOPER: I believe so, Your Honor.

25 THE COURT: And you'll need this deposition and



1       you'll need the IA files.

2               MS. COOPER:   Correct.

3               THE COURT:   So I'm thinking that you might be in a  
4       position to have that report by the end of March, but check  
5       with your expert.   And when I have the phone call, you let me  
6       know.

7               MS. COOPER:   Sure.

8               THE COURT:   Okay.   Are you having a rebuttal expert?

9               MR. RYBECK:   Yes, Your Honor.

10              THE COURT:   So you'll need 30 days after the service  
11      of the plaintiffs' report.

12              MR. RYBECK:   Yes, Your Honor.

13              THE COURT:   Okay.   And then expert depositions.

14              MR. RYBECK:   Yes, Your Honor.

15              THE COURT:   And then dispositive motions.   Okay.

16              MR. RYBECK:   Judge, I just want to clarify.   The dep  
17      of Chief Thomson is going to be for the City case only,  
18      correct?

19              THE COURT:   That's correct.

20              MS. COOPER:   Yes.

21              MR. RYBECK:   Okay.

22              THE COURT:   Do you agree, Ms. Cooper?

23              MS. COOPER:   Yes.

24              THE COURT:   Yes.   Okay.   Anything else then for  
25      today?   Considering we got a lot done.

1 MR. RYBECK: Nothing from the City, Your Honor.

2 THE COURT: Ms. Cooper, anything further?

3 MS. COOPER: Nothing more, Your Honor.

4 THE COURT: Mr. Teris?

5 MR. TERIS: Nothing more, Your Honor.

6 THE COURT: All right. Everyone have a nice  
7 afternoon. We are adjourned.

8 (Proceedings concluded at 3:56 p.m. )

9 \* \* \* \* \*

10 C E R T I F I C A T I O N

11 I, Josette Jones, court approved transcriber, certify that the  
12 foregoing is a correct transcript from the official digital  
13 audio recording of the proceedings in the above-entitled  
14 matter.

15

16 -----

17 JOSETTE JONES

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